

IN THE MATTER OF CHANGE APPLICATION)
)
NUMBER 55-9512 (a24263))

MEMORANDUM DECISION

Change Application Number 55-9512 (a24263), in the names of Bradley G. and Diane D. Probst, the State of Utah Board of Water Resources, and the Daniel Irrigation Company, was filed on March 15, 2000, to change the point of diversion, place of use, and nature of use of 0.8 acre-foot of water. Heretofore, the water has been diverted from the Strawberry River at a point located North 900 feet and East 2500 feet from the SW Corner of Section 27; from Bjorkman Hollow at a point located North 1200 feet and East 500 feet from the SW Corner of Section 35, both in T1S, R12W, USB&M; from Willow Creek at a point located South 300 feet and East 1300 feet from the NW Corner of Section 1; from Hobble Creek at a point located North 4600 feet and West 1000 feet; from an unnamed draw at a point located North 3450 feet and West 800 feet; from an unnamed draw at a point located North 1200 feet and West 1500 feet all three from the SE Corner of Section 20; from Point of Pines Canyon at a point located North 200 feet and East 600 feet from the SW Corner of Section 28; and from Murdock Hollow at a point located South 500 feet and West 1175 feet from the NE Corner of Section 29, all six in T2S, R12W, USB&M. The water has been used for the irrigation of 0.26 acre from May 1 to October 31 within the service area of the Daniel Irrigation Company.

Hereafter, it is proposed to divert 0.8 acre-foot of water from a 6-inch diameter well, 100 feet to 500 feet deep, located South 1500 feet and East 2050 feet from the NW Corner of Section 16, T4S, R5E, SLB&M. The water is to be used for the irrigation of 0.07 acre from April 1 to October 31, the watering of four cattle or equivalent, and the domestic purposes of one family in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 16, T4S, R5E, SLB&M.

The application was advertised in The Wasatch Wave on March 29, 2000, and April 5, 2000, and was protested by USA Bureau of Reclamation. In the protest it is stated that the diversion from the well should be limited to the amount of water available from the historic surface source and that administrative aspects of the change application must be appropriately addressed.

The State Engineer has reviewed the change application, the underlying water rights, the protest, and the geohydrology of the area. A very conservative evaluation has been utilized in prior change applications on the Daniel Irrigation Company, and the amount of water applied for in this change application should be available even in the driest of years. The applicants must meet options so that the administrative aspects of this change application can be addressed, and the duly-appointed river commissioner must verify that the release of water occurs to effectuate this change application.

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In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

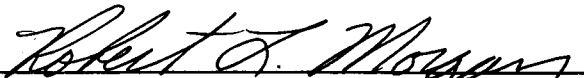
It is, therefore, **ORDERED** and Change Application Number 55-9512 (a24263) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The applicants shall release to the natural stream or to the ground water an amount of water equal to the diversion of one share of stock in the Daniel Irrigation Company.
2. At the time proof of change is submitted to the State Engineer's Office, the applicants shall provide evidence that the historic 0.2667 acre has been removed from active cultivation.
3. The one share of stock in Daniel Irrigation Company shall be kept in good standing for this change application to be in effect.
4. The applicants shall contact and shall provide the Provo River Commissioner with evidence of the amount of water annually released to the groundwater for this change application. The commissioner shall have the responsibility of regulating this change application. All costs incurred in regulating this change application shall be borne by the applicant.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

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Dated this 4th day of August, 2000.


Robert L. Morgan, P.E., State Engineer

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Mailed a copy of the foregoing Memorandum Decision this 4th day of August, 2000,
to:

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